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10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

12 ENOCH ADAMS, JR., LEROY ADAMS,
 13 ANDREW KOENIG, JERRY NORTON
 DAVID SWAN and JOSEPH SWAN,

14 Plaintiffs,

15 v.

16 TECK COMINCO ALASKA INCORPORATED

17 Defendant.

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19 NANA REGIONAL CORPORATION and
 NORTHWEST ARCTIC BOROUGH,

20 Intervenors-Defendants.

21 Case No. A04-49 (JWS)

22 **[PROPOSED] ORDER**
GRANTING SUMMARY
JUDGMENT TO PLAINTIFFS
ON FOUR LEGAL ISSUES

23 At Docket 241, Plaintiffs Enoch Adams, Jr. *et al.* move for summary adjudication on four
 24 legal questions, prior to trial. The Court having considered the arguments for and against
 Adams's position, and good cause appearing therefore, IT IS SO ORDERED THAT:

25 1. If Adams presents evidence proving that Teck Cominco has violated the monthly
 26 average total dissolved solids (TDS) permit limitation in the 1998 permit, currently in effect
 27 during the Arctic Grayling spawning season, then Teck Cominco is liable for all violations of the

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ORDER GRANTING ADAMS PLAINTIFFS
 MOTION FOR SUMMARY JUDGMENT
 ON FOUR LEGAL ISSUES

monthly average permit limit for TDS noticed and proven by Adams.

2. If Adams presents evidence proving that Teck Cominco has violated the monthly average cyanide permit limitation of 4 µg/ml found in Section I.A.1 of the permit and that those violations are ongoing or capable of repetition, Teck Cominco will be liable for those violations. Permit Section I.A.5.d is not relevant to Teck Cominco's liability for violations of Section I.A.1.

Permit Section I.A.5.d is not relevant to Teck Cominco's liability for violations of Section I.A.1.

3. Teck Cominco is precluded from challenging the laboratory results reported in its DMRs; if such laboratory results indicate a violation of a permit condition, Teck Cominco may not evade liability by pointing to a contrary lab result from a different lab also reported in the same DMR.

4. If any violations of monthly average permit limitations are proven at trial, each such violation shall count as a violation for each day of that month in which the facility discharged.

Date:

Judge of the District Court

|| CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2008, a true and correct copy of the foregoing [Proposed] Order Granting Motion for Summary Judgment was served, via electronic mail, on the below identified parties of record:

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/S/ Luke Cole

|| Luke Cole

ORDER GRANTING ADAMS PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON FOUR LEGAL ISSUES